Filed 8/2/10 M.J. v. Superior Court CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

M.J.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN SERVICES,

Real Party in Interest.

F060048

(Super. Ct. No. JD122300-00)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Robert J. Anspach, Judge.

Rory E. McKnight, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Mark L. Nations, Deputy County Counsel, for Real Party in Interest.

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*Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's order issued at a contested dispositional hearing denying her reunification services and setting a Welfare and Institutions Code section 366.26[1] hearing as to her infant daughter, N. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In September 2009, then 28-year-old petitioner gave birth to N., her sixth child, at home. Petitioner and N. were transported by ambulance to the hospital where they tested positive for marijuana. Petitioner admitted smoking marijuana throughout her pregnancy but denied using any other drugs.

Petitioner has a long history of marijuana use, which contributed to the termination of her parental rights to her five other children born between 1997 and 2003. Petitioner received family maintenance and family reunification services from November 1998 to February 2000 for her first child, Z., born in 1997. Her services consisted of parenting instruction and counseling for domestic violence and sexual abuse. However, petitioner was noncompliant. Consequently, the juvenile court terminated services and Z. was adopted in 2001. Meanwhile, in 1999 and 2000, petitioner gave birth to F. and E., respectively. She smoked marijuana during both pregnancies. The court denied petitioner reunification services as to both children and their adoptions were finalized in 2002 and 2003. In 2003, petitioner gave birth to her fourth child, a daughter, C., while visiting family in Oklahoma. Petitioner returned to California with C. and raised her until the age of three. Petitioner also delivered her fifth child, R., in 2003. R. was removed from petitioner's custody at birth and petitioner was not offered reunification services. R. was adopted in April 2005. In May 2006, the Kern County Department of Human Services (department) received a report that petitioner was hitting and punching C. and

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

calling her a "mother fucker." C. told the social worker that petitioner frequently hit her and showed the social worker scars on her legs. C. was taken into protective custody and adjudged a dependent of the court. The court denied petitioner reunification services and C. was adopted in September 2007.

Petitioner also has a history of mental health problems following the death of her mother in 2000. In 2001, she was treated at a crisis unit after disclosing she was hearing voices. She said she was diagnosed with a mental health disorder but did not know which one. She was also prescribed several psychotropic medications but stopped taking them after several weeks because she did not like the way they made her feel.

In September 2009, the department detained N. at the hospital and filed a dependency petition on her behalf, alleging petitioner had been diagnosed with bipolar disorder and post traumatic stress syndrome for which she was not taking medication or participating in therapy. That, in combination with her continuing use of marijuana, the department alleged placed N. at a substantial risk of harm. (§ 300, subd. (b).) In addition, the department alleged petitioner neglected and/or abused N.'s siblings and N. was at risk of similar neglect and/or abuse. (§ 300, subd. (j).)

On September 25, 2009, petitioner provided the department a copy of a certificate showing she had completed a parenting and child neglect class in June 2009. She also submitted to a drug screen, which yielded a positive result for marijuana. The social worker asked petitioner if she was receiving mental health counseling and petitioner stated she was not. The social worker recommended petitioner get into treatment as soon as possible. Petitioner said she would call Kern County Mental Health (KCMH).

On September 29, 2009, the juvenile court ordered N. detained. Petitioner's attorney asked the court to refer petitioner for a mental health evaluation through KCMH. A discussion ensued about whether petitioner would be evaluated by a clinical psychologist at KCMH and whether she would even be treated there if she were not psychotic. Following the discussion, the court appointed Dr. Couture, clinical

psychologist, to evaluate petitioner. The court also set the jurisdictional/ dispositional hearing (combined hearing) for November 2009 and the department placed N. in foster care. Petitioner signed an initial case plan consisting of anger management and domestic violence classes, substance abuse counseling and monthly random drug testing.

In October 2009, petitioner enrolled in anger management and domestic violence classes and completed an intake appointment for substance abuse counseling. In its report for the combined hearing, the department recommended the juvenile court deny her reunification services.

In November 2009, the juvenile court convened the combined hearing but continued it to February 2010 pending receipt of Dr. Couture's report. Meanwhile, petitioner successfully completed the anger management and domestic violence classes. However, she was not addressing her substance abuse. She tested positive for marijuana in October, negative in early November, and failed to drug test for the three consecutive tests scheduled for November 23rd to December 7th, 2009.

In mid-December 2009, petitioner met with Dr. Couture for her psychological evaluation. She told him she began smoking marijuana at the age of 12 but denied using any other illicit drugs or abusing prescription drugs. She said she smoked marijuana daily because it relaxed her. However, she also told Dr. Couture she tested weekly for drugs and all her drug test results were negative. She claimed 86 days of sobriety. She told him she was required to participate in substance abuse classes but had not started them. However, she also told him she started the classes in October 2009 and was scheduled to complete them by April 2010. She said she was also required to attend Narcotics Anonymous meetings but refused to do so, explaining she did not want to listen to people who take drugs.

Dr. Couture diagnosed petitioner with Narcissistic Personality Disorder and cannabis abuse, which he believed placed N. at risk. He stated that petitioner is "remarkably self-centered" and that her personality disorder would not respond to

medication or traditional psychiatric treatment. Therefore, he did not recommend reunification services.

In February 2010, the juvenile court convened the combined hearing and appointed clinical psychologist, Dr. Longwith, to conduct a psychological evaluation of petitioner. The court continued the hearing to March 2010.

Petitioner met with Dr. Longwith in late February 2010. She told him she last tested positive for drugs in October 2009 and that she was participating in outpatient drug treatment, which she was scheduled to complete in April 2010. She said she would do whatever necessary to reunite with N. but would not commit to taking medication. When Dr. Longwith asked petitioner if she thought she could benefit from mental health treatment, she said she did not want to talk about it.

Dr. Longwith diagnosed petitioner with a provisional diagnosis of bipolar disorder, antisocial personality disorder, and cannabis abuse. He found her unlikely to satisfactorily complete reunification services given her unwillingness to commit to treatment. However, in mitigation, he acknowledged she was closer than ever before to reunifying with her child as evidenced by her desire to maintain her parental rights and her participation in court-ordered services. Nevertheless, he did not believe she could safely parent N. given her lack of insight into what was required of her, her uncontrolled mental health problems, unpredictable moods, and refusal to accept treatment.

In March 2010, the juvenile court conducted the jurisdictional phase of the combined hearing. Petitioner's attorney made an offer of proof accepted by the court that petitioner completed domestic violence counseling and parenting instruction, participated weekly in random drug testing, and was participating in and expected to complete substance abuse counseling in April 2010. In addition, she was willing to be assessed for and participate in mental health treatment. Further, she went for a mental health assessment and was told she did not qualify for mental health services because she was not psychotic. She was referred to another agency and had an appointment in April 2010.

She did not believe she needed mental health treatment but was willing to participate in it. She also offered that she tested negative for drugs. The juvenile court took judicial notice of the sibling case files and found the allegations in the petition true. The court set the dispositional hearing for April 2010.

Meanwhile, petitioner's attorney asked Dr. Longwith whether his opinion regarding petitioner's ability to reunify would change if she committed to mental health treatment/case management services. Dr. Longwith responded in a letter filed with the juvenile court, stating he would be comfortable recommending reunification based on his understanding that her progress would be reviewed at six-month intervals and that she could receive up to 18 months of services.

In its report for the dispositional hearing, the department acknowledged petitioner was participating in her reunification services and regularly visiting N. but opined it would not be in N.'s best interest to offer petitioner reunification services. The department also advised against offering N.'s father reunification services.

The juvenile court conducted a contested dispositional hearing in April 2010. Dr. Longwith testified his recommendation to offer petitioner reunification services was based on his understanding that the 18 months would commence on the date of the dispositional hearing. He said if the 18-month period began from September 2009, when N. was initially detained, it would be impossible to achieve any results. Dr. Longwith further testified that petitioner would have to commit to mental health treatment, which would involve psychotropic medication, to treat the underlying bipolar disorder and individual therapy. He also said bipolar disorder and personality disorder could cause a person to act out in violence and anger and to self-medicate. He believed petitioner had been self-medicating her mental illness with marijuana for quite some time. He also believed her behavior would not change unless her underlying mental disorders were treated. However, he did not believe it could be done in less than 18 months.

Following Dr. Longwith's testimony, petitioner's attorney made an offer of proof accepted by counsel that petitioner had appointments in May 2010 for a medication evaluation and individual therapy. Otherwise, she had completed all aspects of her reunification plan and drug tested weekly since December 7, 2009, with negative results.

At the conclusion of the hearing, the juvenile court found the department made reasonable efforts and provided reasonable services to prevent N.'s removal and make it possible for her to return home. The court also found petitioner made moderate progress and N.'s father made minimal progress in mitigating the cause for her removal. The court ordered N. removed from the custody of petitioner and N.'s father and denied them reunification services. The court also set a section 366.26 hearing. This petition ensued.[2]

DISCUSSION

I. Reasonableness of Services

Petitioner contends the department's failure to refer her for mental health counseling between detention and disposition was unreasonable. Therefore, she argues, the juvenile court erred in finding she was provided reasonable services. We disagree.

The purpose of reunification services is to correct the conditions that led to removal of the dependent child. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) To that end, the department must identify the problems leading to loss of custody, offer services designed to remedy those problems, maintain reasonable contact with the parent(s), and make reasonable efforts to assist in areas where compliance is difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) In evaluating the reasonableness of services, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) On appeal, we view the evidence in the light most favorable to the department and indulge all legitimate and

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[2] N.'s father did not file a writ petition.

reasonable inferences to uphold the juvenile court's finding. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

In this case, the department was aware of petitioner's history of mental health problems even though the specific nature and required treatment had yet to be determined. For this reason, her attorney asked the court to order a mental health evaluation at the detention hearing. After a discussion, which included petitioner's attorney and county counsel, the juvenile court decided that the best method for fully assessing petitioner's mental health needs was to appoint a clinical psychologist to conduct a psychological evaluation. As a result, petitioner's initial reunification plan did not include an order for mental health counseling pending the results of the evaluation.

Under the circumstances, we conclude the department's failure to refer petitioner for mental health counseling, without having the benefit of a psychological evaluation, was not unreasonable. Further, there is mention several times in the appellate record that petitioner would not have received mental health services through KCMH because she was not actively psychotic. Assuming that is the case, then presumably petitioner would not have received mental health services even if the department referred her for them. In light of the foregoing, we affirm the juvenile court's finding that the department made reasonable efforts and provided reasonable services to prevent N.'s removal from petitioner's custody.

II. Denial of Reunification Services

Petitioner contends the juvenile court erred in denying her reunification services. We disagree.

The juvenile court is required to order family reunification services whenever a child is removed from parental custody unless the court finds by clear and convincing evidence that the parent is described by any of 15 exceptions set forth in section 361.5, subdivision (b). (§ 361.5, subds. (a) & (b)(1)-(15).) These exceptions to the general rule reflect a legislative determination that attempts to reunify may be futile under certain

circumstances and may not serve a child's interests. (*Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.)

In this case, the juvenile court denied petitioner reunification services pursuant to section 361.5, subdivision (b)(10) and (11). Subdivision (b)(10) of section 361.5 (subdivision (b)(10)), authorizes the denial of reunification services where the court terminated reunification services for the child's sibling because the parent failed to reunify with the sibling and did not subsequently make a reasonable effort to treat the problems that led to the sibling's removal. Subdivision (b)(11) of section 361.5 (subdivision (b)(11)), authorizes the denial of reunification services to a parent whose parental rights to the child's sibling were permanently severed and who did not subsequently make a reasonable effort to treat the problems that led to the sibling's removal.

Petitioner does not dispute that subdivision (b)(10) and (11) applies to her insofar as her reunification services for Z. were terminated and her parental rights to N.'s five siblings were terminated. Rather, she contends her successful completion of the parenting program in June 2009 and her completion of all court-ordered services by the dispositional hearing compelled a finding that she made subsequent reasonable efforts to treat the problems requiring the removal of N.'s siblings. We conclude substantial evidence supports the juvenile court's finding that petitioner did not make subsequent reasonable efforts hence its order denying her reunification services.

In this case, the stated reasons for removing petitioner's children were drug use, physical abuse, domestic violence, and mental illness. However, in retrospect, it appears her core problem all along was her mental illness, which could explain her violent behavior and marijuana use. Petitioner knew that her children were being removed from her because of her marijuana use but continued to smoke it. Further, she knew she had a mental illness, which required treatment, but denied needing treatment and refused it until just before the dispositional hearing. Consequently, the juvenile court could properly

find on this evidence petitioner did not make reasonable efforts to remedy the problems requiring her children's removal. The fact that she completed a parenting class before N.'s birth, and the other required classes afterward, does not help her cause when she persisted in refusing the one service that offered any possibility of reunification.

What is clear in this case is that petitioner was finally willing to make an effort to reunify with her child. Unfortunately, it took losing five others for her to reach that point. While we are mindful that every effort should be made to save a parent's relationship with a child despite the parent's history of misconduct (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464), the "no-reasonable effort" clause was not intended to provide a parent, such as petitioner, another opportunity to address an underlying problem when she had many opportunities and failed to do so. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 843.) Rather, it was intended to mitigate an otherwise harsh result in the case of a parent who, having failed to reunify, subsequently worked toward correcting the underlying problem. (*Id*. at p. 842.) Petitioner does not present such a case and we find no error on this record.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.